Petition under 28 USC § 2254 for writ of Habeas Corpus By a person in State Custody

William Jay Hammons,
Petitioner,

V.

Civ. Act. No. 05-718-KAJ

Thomas L. Carroll, Warden
and Carl C. Danberg,
Attorney General for the
State of Delaware
Respondents

Petitioners Memorandum

Date: 2-14-06

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NATURE AND STAGE OF PROCEEDINGS

PETITIONER IS AN INMATE AT THE DELAWARE CORRECTIONAL CENTER IN SMYRNA, DELAWARE. ON JUNE 13th, 2002, PETITIONER ENTERED PLEAS OF GUILTY TO 1 COUNT OF RAPE 2ND degree, 1 COUNT OF UNLAWFUL IMPRISONMENT 1st degree, AND 1 COUNT OF ASSAULT 3rd degree. (SENT. ORDER AT A-23).

PETITIONER WAS SENTENCED IMMEDIATLEY TO 20 YEARS LEVEL 5 FOR RAPE 2ND TO BE FOLLOWED BY 2 YEARS LEVEL 4 FOR UNLAWFUL IMPRISONMENT 1ST TO BE FOLLOWED BY 1 YEAR LEVEL 3 PROBATION FOR ASSAULT 3RD.

THEREAFTER, PETITIONER, ACTING PRO-SE FILED A TIMELY NOTICE ON 7-11-02 (DKT. IT. #104). ON 7-29-02, COUNSEL FILED A FORMAL NOTICE OF APPEAL., (DKT. IT. #108). ON 6-10-03 DELAWARE SUPREME COURT AFFIRMED., (DKT IT. # 148).

THEREAFTER PETITIONER FILED A TIMELY POST-CONVICTION MOTION ON 4-5-04, (DKT. IT. # 171), WHICH WAS DENIED ON 8-16-04 (DKT. IT. # 182).

PETITIONER FILED A TIMELY NOTICE OF APPEAL ON 10-18-04 IN DELAWARE SUPREME COURT WHICH WAS DENIED ON SEPT. 28th, 2005. THEREAFTER, PETITIONER FILED HIS DISTRICT COURT HABEAS CORPUS ON 10-13-05. THIS IS PETITIONERS MEMORANDUM OF LAW.

Summary of Arguments

I. Ineffective Assistance of Counsel Coercion to plea By Counsel

II. Ineffective Assistance of Counsel Counsel Failed to Communicate in an effective manner with petitioner giving Him A Full understanding of Consequences of His plea.

III. Petitioner is Legally and Factually Innocent, Insufficient Evidence to Sustain Conviction.

IV. Supreme Court Ruling was Contrary to clearly established Federal Law entitling petitioner to Habeas Corpus Relief where the merits of the claims were meritorious and the Court never applied the Collateral doctrine to an Actual Innocence Claim.

Statement of Facts

On September 24th, 1998, Petitioner was arrested and charged with Assault 3rd arising from an altercation he had with Magdolna Kesckeny regarding his presence near her rented apartment building. Additionally, Petitioner lied about his name and was charged with 3 counts of criminal impersonation and 3 counts of Forgery 2nd for placing the false name on finger print cards.

On September 28, 1998, Petitioner was arraingned in Court 18 on the aforementioned charges and he was additionally charged with Attempted Rape and Kidnapping charges stemming from the same incident. Additionally Petitioner was charged with Raping and Kidnapping Kristen Bakalar, an 18 year old College Co-ed from Connecticut.

Petitioner was indicted on 12-7-98 (Dkt. It. #7), for 11 of the 14 charges.

Petitioner remained incarcerated for the 3 years 9 months prior to his trial on 6-11-02. On 6-13-02, mid-way through trial, Cawsel eliminated the States DNA Expert as a defense witness (A227) and advised petitioner that no witnesses would be called on his defense so his only

OPTIONS WERE TO plead guilty TO RAPING KRISTEN BAKALAR OR HE WOULD BE FOUND guilty AND BE GIVEN LIFE IN PRISON.

THESE ACTIONS BY COUNSEL CONVINCED PETITIONER THAT, EVEN THOUGH HE KNEW HE WAS FACTUALLY INNOCENT IN THE BAKALAR INCIDENT AND FACTUALLY INNOCENT IN THE Attempted RAPE AND KIDNAPPING IN THE KESKENY INNOCENT, COUNSEL WOULD NOT MOUNT AN EFFECTIVE DEFENSE AND THAT PETITIONER WOULD INDEED BE FOUND guilty, SO ON 6-13-02 PETITIONER, UPON COUNSELS ADVICE, PLED OUT.

ON APPEAL, COUNSEL NEVER RAISED AN ACTUAL INNOCENCE CLAIM, HE ONLY ADDRESSED THE ILLEGALITY OF PETITIONERS SENTENCE despite REPEATED REQUEST FOR PETITIONER TO DO SO. (A99)

PETITIONERS SENTENCE WAS AFFIRMED ON 6-10-03 (DKT. IT. # 148). ON 4-5-04 PETITIONER DOCKETED HIS Rule 61 POST-CONVICTION RELIEF MOTION. (DKT. IT. # 171), WHICH WAS DENIED ON 8-16-04 (DKT. IT. # 182).

THEREAFTER PETITIONER FILED A TIMELY NOTICE OF APPEAL IN DELAWARE STATE SUPREME COURT ON 10-18-04 (DKT. IT. 183), WHICH WAS DENIED ON 9-18-05 (A258).

ON 10-13-05 PETITIONER FILED THIS PETITION FOR HABEAS CORPUS IN DISTRICT COURT.

THIS IS PETITIONERS MEMORANDUM IN SUPPORT THEREOF.

Memorandum

In answer to Respondants answer to petitioners 28 USC 2254 Habeas Corpus, petitioner responds as follows.

Facts

Petitioner does not dispute Respondants Statement of Facts with the exception that an independat witness, Alleged to have been petitioners cell mate, Harry Smith, was a person that petitioner confessed his crimes to. These Alleged confessions never happened nor was mr. Smith ever a cell mate of petitioners.

Discussion

petitioner raises four grounds to relief. (1) that Counsel coerced him into pleading guilty by stating that if he did not plea he would be found guilty and be given life in prison because the State had over whelming evidence to convict him. Counsel made prejudicial opening statements, Counsel offered other crimes evidence; Refused to object to two knives differing in shape and size being admitted into evidence; Refused to subpoena witnesses

For defense advising petitioner that no witnesses would be called to testify in his behalf, was never advised by Counsel or the Court of his Right to Subpoena Witnesses. Would not obtain all discoverable ~~de~~ evidence, Refused to investigate a prior Rape that happened in the same area with the same modis operandi or to obtain the DNREC Report of this incident. And Refused to force State to turn over aforementioned discovery material. (2) Counsel Failed to object to defendants illegal Sentence. (3) Legal, Factual innocence, insufficient evidence to Sustain Conviction. (4) Supreme Court Refused to Apply Collateral doctrine to Actual innocence claim.

As to claim one (1), petitioner Alleges coercion in violation of his 14th and 5th Amendment Rights to due process, and ineffective assistance of Counsel in violation of his 6th Amendment Rights. Additionally he asserts that his 8th Amendment Rights were violated because he was coerced to confess to crimes he was factually innocent of.

It should be noted here that Counsel never denied telling petitioner that the State

Had alot of damning evidence against Him and that if He did not plea, He would defonetly Be found guilty of one of these "Rapes" and Be sentenced to life in prison A93. Because of the specific nature of these allegations and the failure of Respondants to deny or to account for thier failure to deny them specifically; petitioner argues that they must Be forced to do so by way of an evidentiary Hearing. Walker v. Johnston, 61 Sct. 574; Waley v. Johnston, 62 Sct. 964.

In Light of the factual evidence substantiated By the Record as Argued in Claim three of this petition, petitioner Argues that Counsels advice for petitioner to plea out was not Reasonably Competent Advice, Violating petitioners 5th, 6th, 8th, and 14th Amendment Rights and should Be open for attack under U.S. v. Stubbs, 279 F3d. 402 (6th Cir. 2002). Strickland v. Washington, 104 Sct. 2052.

Petitioner would Also Like to mention Here that DNA evidence of the pubic Hair was withHeld From Him By Counsel until 5 months After He pled out. It was only then given to Him Because State Supreme Court ordered Counsel to do so; and even then

Counsel Failed to Advised Petitioner That the Pubic Hair in question was That of an unknown Caucasian male. In Fact it was only through His own investigation Did petitioner discover That whenever the "Y" chromosone is present, it is inheritantly male. (See Exhibits A113, A141, A142). Contrary to the States assertion That the stipulation at Trial Stated the DNA performed on the Hair exonerated petitioner, petitioner testifys That DNA was never mentioned at all in the stipulation.

Additionally, not one of the police witnesses would Have qualified to testify to the DNA Test Results or to the meaning of the "Y" chromosones, which makes it Highly doubtful That the Jury would Have Heard this information. Petitioner Himself didn't Stumble upon This information until After His plea.

AS TO ground TWO, (2), petitioner ARGUES THAT Counsel WAS AGAIN INEFFECTIVE FOR ~~FAILING~~ TO ADVISE Him OF THE Illegality OF His SENTENCE.

Petitioner HAS A Constitutional Right TO KNOW How His SENTENCE will BE STRUCTURED, and WHEN ONE SENTENCE BEGINS and ANOTHER ONE ENDS.

petitioner will Not address THIS Claim IN THE PRESENT Reply BRIEF, other THAN TO SAY His 6th and 14th Amendment Rights were VIOLATED.

AS TO CLAIM THREE, (3), LEGAL AND FACTUAL INNOCENCE, INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION.

RESPONDANTS ARGUED THAT ACTUAL INNOCENCE IS NOT, IN ITSELF, A CONSTITUTIONAL VIOLATION CITING HERRERA V. COLLINS, 506 U.S. 390, 404 (1993) IN SUPPORT THEREOF. IN HERRERA, THE COURT LEFT OPEN THE ISSUE OF WHETHER ACTUAL INNOCENCE WAS A CONSTITUTIONAL VIOLATION. THERE THE QUESTION WAS WHETHER IT WAS UNCONSTITUTIONAL TO EXECUTE SOMEONE WHO WAS ACTUALLY INNOCENT. THE COURT NEVER DIRECTLY ADDRESSED THE ISSUE OF WHETHER ACTUAL INNOCENCE IS A CONSTITUTIONAL ISSUE/VIOLATION.

SEVERAL JUSTICES DID HOWEVER, RECOGNIZE THAT A PERSUASIVE SHOWING OF INNOCENCE MAY ENTITLE A DEFENDANT TO RELIEF IN SOME CASES.

SINCE HERRERA, THE COURTS HAVE NOT BEEN IN AGREEMENT AS TO WHAT THE COURT ACTUALLY HELD. THE 2ND, 3RD, 4TH, 6TH, 8TH, AND 9TH CIRCUIT COURTS HAVE ALL RECOGNIZED THE POSSIBILITY OF AN ACTUAL INNOCENCE CLAIM. SEE TRIESTMAN V. U.S., 124 F3d 361 (2ND CIR. 1997). U.S. V. GARTH, 188 F3d 99 (3RD CIR. 1999); GRAHAM V. ANGELONE, 191 F3d 447 (4TH CIR. CERT. DENIED, 120 SCT. 612 (1999). RUST V. ZENT, 17 F3d 155 (6TH CIR. 1994). ALLEN V. NIX, 55 F3d. 414 (8TH CIR. 1995). WOOD V. COOK, 523 U.S. 1129 (1998). SOME STATE COURTS

HAVE ALSO RECOGNIZED SUCH A CLAIM. SEE RUSSELL V. STATE, DEL. SUPR., 734 A2d 160 (1998); STATE V. FRIEND, DEL. SUPER. CR. A. NO. IN93-08-0361, CARPENTER, J., MAY 12, 1994, ORDER at 3, AFF'd, DEL. SUPR., NO. 75, 1996, WALSH J., (ORDER), (CITATIONS OMITTED). ONE OF THE LEADING CASES ON THIS ISSUE IS STATE EX REL HOLMES V. COURT OF APPEALS, 885 S.W. 2d. 389 (TEX. CRIM. APP. 1994), WHERE TEXAS COURTS RECOGNIZED AN ACTUAL INNOCENCE CLAIM AND SET FORTH THE PROCEDURES FOR ESTABLISHING IT. GENERALLY, TO ESTABLISH "ACTUAL INNOCENCE", A DEFENDANT MUST DEMONSTRATE THAT, IN LIGHT OF ALL THE EVIDENCE, INCLUDING EVIDENCE NOT PRESENTED TO THE TRIER OF FACT, IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM. SEE ALSO 28 USC. 2255; 28 USC 2254 (d)(2); 28 USC 2254(e)(2)(B).

THE RESPONDANTS ARGUE THAT PETITIONERS CLAIM THAT HE IS FACTUALLY INNOCENT, ABSENT AN INDEPENDANT CLAIM OF A CONSTITUTIONAL VIOLATION IN THE UNDERLYING CRIMINAL PROCEEDING, IS NOT COGNIZABLE IN FEDERAL HABEAS AND SHOULD BE DISMISSED. THIS IS SIMPLY NOT TRUE. IN CLAIMS ONE AND TWO PETITIONER ARGUES HIS 5th, 6th, 8th, AND 14th AMENDMENT RIGHTS WERE VIOLATED BECAUSE HIS GUILTY PLEA WAS COERCED SIGNALING THAT IT WAS NOT

Knowingly and Voluntarily and Intelligently made which would Amount to a Constitutional Violation and would Question the Validity of the Underlying Criminal Proceedings.

Additionally part of petitioners Factual Innocence Claim was "Insufficient Evidence to Sustain a Conviction" which Questions the Factual Foundation of the plea proceedings. Petitioner Further Cited that his 5th, 6th, 8th, and 14th Amendment Rights were Violated under this Claim, (see page #32 of Habeas petition). And Asked this Court to Review this Claim under 28 USC 2254(d), 28 USC 2254 (e)(2)(B); And 28 USC 2254(F).

Petitioner Admits He is Not A Lawyer and does Not Know How to Lay out A Claim As well As A Lawyer would. In Addition to that, Legal Terminology is difficult for Him to Understand And That's Complicated By the Fact That Legal Research in the part of prison He is in is difficult Because His access to Legal materials And to the Law Library itself is very Limited.

Petitioner Argues His Claims are Valid And if the Court Found Any of them to Be Correct which they are, then they would

NATURALLY TRANSLATE INTO A VIOLATION OF PETITIONERS DUE PROCESS RIGHTS UNDER THE 5TH AND 14TH AMENDMENTS. ALTHOUGH PETITIONER IS IGNORANT OF LEGAL PROCEEDURES AND ARGUMENTS TO BE MADE, HE DID MENTION THAT HIS 5TH, 6TH, 8TH, AND 14TH AMENDMENT RIGHTS WERE VIOLATED IN THIS CLAIM AND HIS TWO PREVIOUS CLAIMS.

IN U.S. V. GARTH, 188 F3d. 99, (3RD CIR. 1999), THE COURT HELD THAT GARTHS PRO-SE PETITION SHOULD NOT BE READ SO STRICTLY AS TO OBFUSCATE THE CLAIM HE IS MAKING.

IN THE INSTANT PETITION, PETITIONER ASSERTS THAT THERE WAS NO FACTUAL FOUNDATION FOR HIS GUILTY PLEA WHICH WOULD EQUATE TO AN ASSERTION OF A DUE PROCESS VIOLATION BASED UPON HIM BEING SENTENCED TO PRISON FOR RAPE 2ND DEGREE AND UNLAWFUL IMPRISONMENT 1ST DEGREE FOR CONDUCT THAT THE FACTS SHOW COULD NOT HAVE POSSIBLY HAPPENED BY HIM.

BECAUSE A CLAIM OF COECION AND FACTUAL INNOCENCE PLAINLY ARGUES THAT THE PLEA WAS NOT KNOWINGLY AND INTELLIGENTLY MADE AND GUILTY PLEAS THAT ARE NOT KNOWINGLY

And intelligently made Violate due process, Such a Claim Constitutes A proper Constitutional Claim For Habeas Review. Bousley, 118 Sct. At 1607; Parke V. Raley, 506 U.S. 20, 28-29, 113 Sct. 517, 121 L.Ed 2d 391 (1992); McCarthy V. United States, 394 U.S. 459, 466, 89 Sct. 1166, 22 LEd. 2d 418 (1969); Buggs V. United States, 153 F3d. 439, 444, (7th Cir. 1998).

In Light of the Facts Set Forth in His Habeas petition that are Supported By the Record, petitioner Argues that he has met the most stringent Burden of proving By Clear and Convincing evidence that he is Factually innocent of Raping and Kidnapping Kristen Bakalar. Schlup V. Delo, 115 Sct. 851, 867; and Because he has proven this His plea and Sentence Should Be Vacated and Remanded For Further proceedings.

AS TO CLAIM FOUR (4) SUPREME COURTS RULING WAS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW ENTITLING PETITIONER TO HABEAS CORPUS RELIEF WHERE THE MERITS OF HIS CLAIM WERE MERITORIOUS AND THE COURT NEVER APPLIED THE COLLATERAL DOCTRINE TO AN ACTUAL INNOCENT CLAIM.

FOR THE REASONS STATED IN GROUND THREE AND PETITIONERS HABEAS CORPUS, THE PETITIONER ARGUES THAT THE COURT RULED CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW AS OUTLINED IN THE CASES CITED IN HIS HABEAS PETITION. 28 USC. 2254(a).

FOR THE FOREGOING REASONS, PETITIONER REQUEST AN EVIDENTIARY HEARING, HIS SENTENCE BE VACATED AND HIS CASE REMANDED BACK TO SUPERIOR COURT.

DATE: 2-14-06

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON FEBUARY 14th, 2006, I FILED AN ANSWERING MEMORANDUM TO THE RESPONDANTS ANSWER TO MY HABEAS CORPUS (DISTRICT COURT), BY PLACING SAME IN THE INSTITUTION MAIL AT THE DELAWARE CORRECTIONAL CENTER. I MAILED THE ORIGINAL TO DISTRICT COURT AND ONE COPY TO THE FOLLOWING:

TO: ELIABETH R. MCFARLAN
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